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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

John Wilterding,

Plaintiff,

v.

**Capital One, National
Association, and Does 1-20,
Inclusive,**

Defendant(s).

Case No.: '15CV0526 LAB BGS

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF:**

- 1. The Fair Credit Reporting Act, 15
U.S.C. §§ 1681, et seq.**
- 2. The Consumer Credit Reporting
Agencies Act, *Cal. Civ. Code* §1785,
et seq.**
- 3. California Civil Code. §§ 1798.92,
et seq.; and**

JURY TRIAL DEMANDED

INTRODUCTION

- 1
2 1. In enacting the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§1681, et
3 seq., the federal legislature explained that that the banking system is dependent
4 upon fair and accurate credit reporting and that there is a need to insure that
5 consumer reporting agencies exercise their grave responsibilities with fairness,
6 impartiality, and a respect for the consumer’s right to privacy. 15 U.S.C.
7 §§1681(a)(1),(4).
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9
- 10 2. In enacting the Consumer Credit Reporting Agencies Act (“CCRAA”), *Cal.*
11 *Civ. Code* §§1785, et seq., the legislature explained that there is a need to insure
12 that consumer credit reporting agencies exercise their grave responsibilities
13 with fairness, impartiality, and a respect for the consumer's right to privacy and
14 that it intends to regulate consumer credit reporting agencies pursuant to this
15 title in a manner which will best protect the interests of the people of the State
16 of California. *Cal. Civ. Code* §§1785.1(c),(e).
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18
- 19 3. In enacting the California’s Identity Fraud Statute, *Cal. Civ. Code* §§1798.92 et
20 seq., the legislature found that the right to privacy is being threatened by the
21 indiscriminate collection, maintenance, and dissemination of personal
22 information and the lack of effective laws and legal remedies, and that in order
23 to protect the privacy of individuals, it is necessary that the maintenance and
24 dissemination of personal information be subject to strict limits. *Cal. Civ. Code*
25 §1798.1(a),(c).
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1 4. John Wilterding (“Plaintiff”) brings this action against Capital One, National
2 Association (“Defendant”), due to Defendant’s willful efforts to attempt to
3 collect monies from Plaintiff on a debt that he did not incur and does not owe,
4 despite Plaintiff numerously advising Defendant that the debt Defendant sought
5 was a result of fraud on Plaintiff’s identity. Defendant ignored written disputes
6 submitted by Plaintiff to all three (3) major credit reporting as well as an
7 identity theft affidavit prepared and signed by Plaintiff and provided to
8 Defendant, attesting to the fact that the debt sought be Defendant is not by owed
9 and providing Defendant all additional information that Plaintiff believed would
10 assist Defendant in investigating the identity fraud. As a result of Defendant’s
11 conduct, Plaintiff has been harmed, and his rights as a consumer have been
12 violated, as further detailed below.

13 5. Plaintiff makes these allegations on information and belief, with the exception
14 of those allegations that pertain to a plaintiff, or to a plaintiff’s counsel, which
15 Plaintiff alleges on personal knowledge.

16 6. While many violations are described below with specificity, this Complaint
17 alleges violations of the statute cited in its entirety.

18 7. Unless otherwise stated, all the conduct engaged in by Defendant took place in
19 California.

20 8. Any violations by Defendant were knowing, willful, and intentional, and
21 Defendant did not maintain procedures reasonably adapted to avoid any such
22

violation.

9. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant's named.

PARTIES

10. Plaintiff is a "Victim of Identity Theft" as that term is defined by *Cal. Civ. Code* § 1798.82(d), and a "consumer" as defined by 15 U.S.C. §1681a and *Cal. Civ. Code* §1785.3(a).

11. Defendant is a company incorporated in the State of Virginia with its principal place of business in MacLean, Virginia. At all times relevant herein, Defendant did business in the State of California, County of San Diego, and at the time Defendant first engaged in the conduct that resulted in the harm to Plaintiff, Plaintiff was residing in San Diego County, California.

12. At all relevant times herein, Defendant was a "claimant" as that term is defined by *Cal. Civ. Code* § 1798.92(a). Further, at all relevant times, Defendant was a company who regularly provides information to consumer reporting agencies, and is therefore an "information furnisher" as defined by the FCRA and CCRAA. Defendant is also a "person" as defined by *Cal. Civ. Code* §1785.3(j).

JURISDICTION AND VENUE

13. The Court has jurisdiction over Plaintiff's cause of action under the FCRA

1 pursuant to 28 U.S.C. §1331, and supplemental jurisdiction over Plaintiff's
2 causes of action under the CCRAA and California Identify Fraud Statute,
3 pursuant to 28 U.S.C §1367.
4

5 14.Venue is proper in the Southern District of California because at the time
6 Defendant began its conduct giving rise to the claims alleged below, Plaintiff
7 was residing in Fallbrook, California, in San Diego County, within the Southern
8 District of California.
9

10 **FACTUAL ALLEGATIONS**

11 15.In or around July of 2008, Plaintiff gained knowledge that three (3) credit cards
12 he had obtained through Defendant, for personal purposes, had been
13 compromised along with this identity and that an unknown individual was using
14 his three credit cards ("Accounts"). Plaintiff gained such knowledge upon being
15 advised as such by another creditor through which he had a line of credit, who
16 noticed suspicious spending activity on Plaintiff's account and notified him
17 promptly.
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20 16.Plaintiff took prompt measures to advise Defendant of the identity fraud which
21 resulted in the Accounts being compromised, after he was able to confirm
22 suspicious spending activity with regards to his Accounts. Plaintiff asked
23 Defendant to close the Accounts issue him new cards, to essentially end the
24 fraud as to the Accounts. However, Defendant refused Plaintiff's request,
25 claiming that Plaintiff's account had not been defrauded; Defendant merely
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1 pointed to the fact that Plaintiff had been making timely payments on the
2 Accounts despite claiming they had been defrauded. Plaintiff advised
3 Defendant that he was timely making payments on the Accounts to avoid any
4 detriment to his credit standing, pending a resolution of the identity fraud issue,
5 and also because *some* of the charges incurred on the Accounts were legitimate
6 and Plaintiff did not want to avoid being legitimately incurred debt obligations.
7

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9 17. Due to Defendant's lack of cooperation, Plaintiff refused to pay the monies
10 above and beyond what he incurred, thus, Defendant reported the Accounts as
11 being past due, to all three major credit reporting agencies, beginning in or
12 around September of 2008, after demanding that Plaintiff pay approximately
13 \$5500 to settle the accounts. Defendant engaged in such conduct despite the
14 fact that the limit on each Account was \$500, and despite the fact that Plaintiff
15 stayed within those limits, clearly evidencing that all charges in excess of \$500,
16 per card, were certainly fraudulent. Plaintiff also took the time to try and
17 explain to Defendant which charges belonged to him and which charges were
18 fraudulent. Defendant refused to cooperate, and alleged to have "charged off"
19 the accounts in January of 2009.
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23 18. However, in or around December of 2009, Defendant eventually entered into a
24 settlement with Plaintiff for less than the full, yet improper balances that
25 Defendant had not only reported to the credit bureaus but have allegedly
26 charged off. Plaintiff paid off the agreed upon amounts to Defendant by May of
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1 2011, September of 2011 and March of 2012, on the Accounts; he advised
2 Defendant that he was making said payments only to avoid further harm to his
3 credit standing and not because he was conceding or agreeing that the
4 fraudulent charges actually belong to him.
5

6 19. Numerous after settling the Accounts with Defendant, Plaintiff disputed the
7 charges and the negative credit reporting with all three major credit reporting
8 bureaus. Plaintiff also submitted an identity fraud affidavit to Defendant
9 directly, in February of 2012, along with the information available to Plaintiff
10 regarding the fraud. The same affidavit was also forwarded to the three major
11 credit reporting agencies, along with written disputes as to the Accounts. Yet, to
12 date, neither the three major agencies nor Defendant have taken steps to erase
13 the improper and negative reporting associated with the fraudulent charges on
14 the Accounts.
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18 20. More than thirty days have passed since Defendant was notified in writing, that
19 Plaintiff was the victim of identity fraud. Defendant was provided all requisite
20 information under the California Identity Fraud Statute, to investigate Plaintiff's
21 claims. Despite no evidence suggesting that Plaintiff incurred the fraudulent
22 charges, Defendant, to date, has not returned the monies it unlawfully collected
23 from Plaintiff.
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FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR CREDIT REPORTING ACT

21. Plaintiff reincorporates by reference all of the preceding paragraphs.

22. Defendant violated sections 1681n and 1681o of the FCRA by engaging in the following conduct that violates 15 U.S.C. §1681s-2(b):

- a. Willfully and negligently continuing to furnish and disseminate inaccurate and derogatory credit, account and other information concerning the Plaintiff to credit reporting agencies and other entities despite knowing that said information was inaccurate; and,
- b. Willfully and negligently failing to comply with the requirements imposed on furnishers of information pursuant to 15 U.S.C. §1681s-2(b).

23. Defendant's conduct was a direct and proximate cause, as well as a substantial factor, in causing the injuries, damages and harm to Plaintiff that are outlined more fully above, and as a result, Defendant is liable to compensate Plaintiff for the full amount of statutory and actual damages, along with attorneys' fees and costs, as well as such other relief permitted by law.

24. Defendant has failed to correct the disputed information within thirty days of Plaintiff's dispute of that information.

25. To the extent that Defendant's actions, counted above, violated the FCRA, those actions were done knowingly and willfully.

Prayer for Relief

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- 1 a) Actual damages;
- 2 b) Statutory damages for willful and negligent violations;
- 3 c) Costs and reasonable attorney's fees; and,
- 4 d) For such other and further relief as may be just and proper including but
- 5 not limited to an Order requiring the deletion of any and all negative
- 6 reporting made by Defendant to the Agencies.
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9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF CONSUMER CREDIT REPORTING AGENCY ACT**

11 ***(Cal. Civ. Code §§1785.25(a))***

12 26. Plaintiff reincorporates by reference all of the preceding paragraphs.

13 27. California Civil Code § 1785.25 (a) states that a "person shall not furnish

14 information on a specific transaction or experience to any consumer credit

15 reporting agency if the person knows or should know the information is

16 incomplete or inaccurate." Defendant violated this provision of the CCRAA by

17 furnishing information to the Agencies while knowing that the information

18 being furnished regarding Plaintiff's Accounts with Defendant were inaccurate.

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21 28. California Civil Code § 1785.25 (b) states that a furnisher that determines a

22 report to a credit reporting agency is not accurate or complete shall promptly

23 notify the consumer reporting agency of that determination and provide

24 corrections to the consumer reporting agency that is necessary to make the

25 information complete and accurate. Defendant has failed to take such steps,

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1 despite having knowledge for nearly six (6) years, that its reporting is
2 inaccurate regarding the accounts at issue.

3 29. Defendant negligently and willfully furnished information to the credit
4 reporting agencies it knew or should have known was inaccurate.
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6 30. Based on these violations of Civil Code § 1785.25 (a), Plaintiff is entitled to the
7 remedies afforded by Civil Code § 1785.31, including actual damages,
8 attorney's fees, pain and suffering, injunctive relief, and punitive damages in an
9 amount not less than \$100 nor more than \$5,000, for each violation as the Court
10 deems proper.
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13 **Prayer for Relief**

14 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
15 the Defendant for the following:
16

17 e) Actual damages;

18 f) Statutory damages for willful and negligent violations;

19 g) Costs and reasonable attorney's fees; and,
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21 h) For such other and further relief as may be just and proper including but
22 not limited to an Order requiring the deletion of any and all negative
23 reporting made by Defendant to the Agencies.
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THIRD CAUSE OF ACTION
VIOLATIONS OF CALIFORNIA' IDENTITY FRAUD STATUTE
(Cal. Civ. Code § 1798.92-1798.97)

31. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

32. The foregoing acts and omissions constitute numerous and multiple violations of the Cal. Civ. Code § 1798.92, including but not limited to each and every one of the above-cited provisions of Cal. Civ. Code § 1798.92.

33. As a result of each and every violation of Cal. Civ. Code § 1798.92, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1798.93(c)(5); statutory damages in an amount up to \$30,000.00 pursuant to Cal. Civ. Code § 1798.93(c)(6); costs pursuant to Cal. Civ. Code § 1798.93(c)(5), attorney's fees and costs pursuant to Cal. Civ. Code § 1798.93(c)(5) and any equitable relief the Court deems appropriate pursuant to Cal. Civ. Code § 1798.93(c)(5).

Prayer For Relief

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

- a) Actual damages
- b) Statutory damages pursuant to *Cal. Civ. Code* §1798.93(c)(6).;
- c) Attorney's fees and cost
- d) Any other equitable or injunctive relief the Court deems appropriate

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TRIAL BY JURY

34. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 06, 2015

By: /s/ Todd M. Friedman

Todd M. Friedman

Suren N. Weerasuriya

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Attorney for Plaintiff

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